



\*79-SBE-178\*

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
VIDA E. HAYWARD NESBIT )

For Appellant: Vida E. Hayward Nesbit, in pro. per.

For Respondent: Jon Jensen  
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Vida E. Hayward Nesbit against proposed assessments of additional personal income tax in the amounts of \$35.35 and **\$43.50** **for the** years 1975 and 1976, respectively.

Appeal of Vida E. Hayward Nesbit

The sole issue for determination **is** whether appellant has met her burden of establishing that a federal determination **relied** upon by respondent in issuing proposed assessments was erroneous.

The Internal Revenue Service **audited** appellant's 1975 and **1976** federal income tax returns and determined that deficiencies existed. Subsequently, respondent **issued notices of proposed assessment** based upon the federal audit report to the extent applicable to appellant's: California personal income tax liability. Appellant ha&ffered **no** evidence which would indicate that **the** determination was incorrect. **Appellant's** only argument **is** based on the statute of limitations.

Section 18586: of the Revenue and Taxation Code provides that respondent may issue a notice of proposed deficiency assessment within four years after the return was filed. Section 18451 allows a longer, period. for assessing a deficiency in situations involving federal adjustments.. **In this case**, appellant's **1975** and **1976** returns were filed on. April **16**, 1976 and March. **31**, **1977**, respectively. **Respondent's** notices of proposed assessment were. issued on May **30**, 1978 and **June 16**, 19-78, which **was well** within the periods **permitted** by the statutes.

Section **18451** of the **Revenue and Taxation** Code, also provides that a taxpayer shall: either concede the accuracy of: a federal determination or state wherein. **it** is erroneous. It is well settled **that a determination** by the- Franchise Tax **Board** based upon a federal audit is **presumed to be correct** and the burden **is on** the taxpayer to overcome that presumption. (Todd v. **McColgan**, 8.9, Cal. App. 2d 509 [201 P.2d 414] (1949); Appeal of Willard, D. and Esther J. Schoellerman, Cal. St. Bd. of Equal., Sept. 17, 1973; Appeal of Joseph B. and Cora Morris, Cal. St.; Bd. of Equal., Dec. 13, 1971.) **Here**, appellant has **offered** no evidence to indicate: **that the** federal action was erroneous. **Therefore**, we must conclude that 'appellant has **failed** to carry her **burden** and respondent's action must be **sustained**.

Appeal of Vida E. Hayward Nesbit

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Vida E. Hayward Nesbit against proposed assessments of additional personal income tax in the amounts of \$35.35, and \$43.50 for the years 1975 and 1976, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 11th day of December, 1979, by the State Board of Equalization.

<u>William W. Burns</u>	Chairman
<u>Dwight Olson</u>	Member.
<u>Ernest Aronburg Jr.</u>	Member
<u>Robert J. [unclear]</u>	Member
<u>[unclear]</u>	Member